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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,964	04/23/2007	Flavio da Cruz Abaurre	0315-0171PUS1	2780
2292	7590	03/03/2011		
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER ATKISSON, JIANYING CUI	
			ART UNIT 3742	PAPER NUMBER
			NOTIFICATION DATE 03/03/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/588,964

Applicant(s)

ABAUURRE, FLAVIO DA CRUZ

Examiner

JIANYING ATKISSON

Art Unit

3742

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-942)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/16/08, 8/10/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group II, claims 10-12 in the reply filed on 12/23/10 is acknowledged. Claim 1-9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The traversal is on the ground(s) that

(1) the process of Group I and apparatus of Group II are closely intertwined and mutually dependent upon each other;

(2) The U-type conch-the special technical features linking Group I and Group II is not taught by US 3,663,231, differences between the U-type conch of the invention and that of the prior art are listed in a table included in the remarks.

However, this is not found persuasive because

(a) The process in Group I can be performed by a machine without a high pressure fan or an electric motor with a heating electric resistance, which is required by the apparatus of Group II; and the apparatus in Group II can be used to perform a process without the step of transporting chocolate mass to a stock tank.

(b) US 3,663,231 teaches a U-type conch (2, Figs. 1-2). The detailed features of the U-type conch of the invention listed in the table are not claimed in Group I or II.

The restriction between Group I and Group II is still deemed proper and is thus made FINAL.

Specification

The abstract of the disclosure is objected to because the reference numbers are not placed between parentheses (PCT rule 8, MPEP §1826). Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: there are no descriptions of figures 3-6:

Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74. Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: for example, **25, 35**, etc. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "an agitator axis (12) in which a fixed arm and agitator arms are articulated ...", if the reference character 12 refers to only an "axis", an imaginary line, then the arms can't be articulated to. The examiner interprets the "axis" to be a "shaft". Appropriate correction is required.

Claim 12 recites the limitation "germinated equipments", it is not clear what type of equipments are considered germinated. The examiner interprets the limitation to mean equipments.

Claim 12 recites the limitations "the U type conch", "the U type processing conch", and "the U type conch structure". There is no consistency in these limitations and there is insufficient antecedent basis for these limitations in the claim. Claim 12 further recites the limitations "the cocoa refining mill", "the side of the U type conch..."; There is insufficient antecedent basis for these limitations either.

The term "extremely reduced" in the phrase of "extremely reduced physical area" in claim 12 is a relative term or term of degree which renders the claim indefinite. The term "extremely reduced" is not defined by the claim, the specification does not provide

a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 11 is rejected since it is dependent on claim 10.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Tourell (US 3,663,231).

Regarding claim 12, Tourell teaches compact installation for the chocolate mass processing, characterized by comprising a disposition of germinated equipments where a sugar mill (refiner 30 can mill sugar) is located above the U type conch (2) thus making feasible the direct dry grinding of the ingredients in the U type processing conch followed by the junction of the cocoa refining mill (shredding stage 6) in the side of the U type conch structure thus forming a monolithic block of equipments occupying an extremely reduced physical area.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tourell (US 3,663,231), and in view of Goiseau (EP 0,406,090).

Regarding claim 10, Tourell teaches a machine for the chocolate mass processing, characterized by comprising a structure made of a U type conch (2), an agitator axis (32) in which a fixed arm (35) and agitator arms (3) are articulated for increasing the chocolate dry mass exposition cycle to contacting fluid.

Tourell does not explicitly disclose pre-heated air coming from a forced ventilation performed through a high pressure fan, activated by an electric motor with a heating electric resistance.

In the same field of endeavor of chocolate tempering, Goiseau teaches heat treatment of chocolate by pre-heated air coming from a forced ventilation performed through a high pressure fan (18) with a heating electric resistance (20).

Thus it would have been obvious to a person of ordinary skill in the art at the time of invention to heat treating the chocolate with pre-heated air forced by a fan with a heating electric resistance to avoid high local temperatures. Though Goiseau does not disclose explicitly that the fan is activated by an electric motor, it would have been obvious to a person of ordinary skill in the art at the time of invention to use a electric motor to drive the fan since it is conventional.

Regarding claim 11, Tourell further teaches that machine in accordance with claim 10, characterized in that the U type conch (2) has jacketed walls (56) to receive a refrigeration fluid (col. 5, lines 25-29).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JIANYING ATKISSON whose telephone number is (571)270-7740. The examiner can normally be reached on Mon-Friday 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on (571)-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JIANYING ATKISSON/
Examiner, Art Unit 3742
2/24/11

/Quang T Van/
Primary Examiner, Art Unit 3742

